

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division**

COREY E. JOHNSON,

Plaintiff,

v.

(K-9) OFFICER MCCOWAN, *et al.*,

Defendants.

Case No. 7:20cv582

**REPLY TO DEFENDANT’S RESPONSE TO PLAINTIFF’S MOTION *IN LIMINE* TO
BAR DEFENDANTS’ “GOOD CHARATER” EVIDENCE**

Plaintiff Corey Johnson submits the following reply to Defendants’ response to his motion *in limine* requesting that this Court bar mention of Mr. Johnson’s or his witnesses’ prior bad acts or discipline. ECF No. 142, ECF No. 148.

ARGUMENT

Defendants argue that this Court should allow some good character evidence in the form of 1) supervisor evaluations; and 2) an award from the American Correctional Association (ACA). Both should be barred.

Both supervisor evaluations and the award at issue here are the precise target of Rule 404’s restrictions on character evidence. They are generalized determinations that a particular officer, or VDOC generally, follows standards and regulations. The inference for the jury to draw from the admission of such evidence is that the officer or facility acted in accordance with that good character. But that is the heart of the dispute. As to the award, an award from the

ACA has no bearing on the specific question of whether supervisors were failing to train or supervise employees on use of canines. The award is far more general and therefore irrelevant to the issue at hand. As to the performance reviews, to the extent that Defendants seek to introduce past performance reviews of individual officers involved in the incident in this case, those reviews should also be barred as their only function would be to cause the jury to assume that an officer acted in accordance with that good character or past good behavior.

Plaintiff agrees that, if the supervisory claims survive, some supervisor evaluations will be relevant, but requests that this court categorically bar general “good” evaluations that are not particularized to the issues presented in this case (excessive use of force by means of canine attack). Any other supervisor evaluation is irrelevant good character evidence.

Plaintiff agrees with Defendants that they can introduce general work history of officers to the extent that they refrain from, as agreed to in their response, introducing evidence of performance assessments or commendations.

For the reasons detailed above Defendants should be barred from introducing “good character” evidence. To the extent they seek to confine their evidence to the subject mentioned in their Response Brief, Mr. Johnson opposes or assents to those particular pieces of evidence as detailed above.

Dated: December 29, 2022

Respectfully submitted,

/s/ Oren Nimni

Oren Nimni (admitted *pro hac vice*)

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CERTIFICATE OF SERVICE

I hereby certify that, on December 29, 2022, I caused the foregoing document to be electronically filed through the Court's CM/ECF system, which caused a notice of electronic filing and copy of the foregoing to be served on all counsel of record.

Respectfully submitted,

/s/ Oren Nimni

Oren Nimni (admitted *pro hac vice*)

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